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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 GABRIEL SANTACRUZ,

6 Plaintiff,

7 v.

8 CHARLES DANIELS *et al.*,

9 Defendants.

Case No. 2:23-cv-0258-APG-BNW

**ORDER APPOINTING COUNSEL**

10 Before the Court is Plaintiff's Motion for Appointment of Counsel (ECF No. 16). For  
11 the reasons stated below, Plaintiff's motion for appointment of counsel is granted.

12 **I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

13 On February 17, 2023, Plaintiff commenced this case by filing an application to  
14 proceed in forma pauperis (ECF No. 2) and a complaint (ECF No. 4). Plaintiff also filed a  
15 motion for appointment of counsel (ECF No. 16).

16 Plaintiff's claims arise due to an alleged failure to provide medical treatment while  
17 incarcerated at Nevada Department of Corrections ("NDOC"). Two claims have survived  
18 screening: a claim for of deliberate indifference to a serious medical need and a claim under  
19 the equal protection clause.

20 **II. PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL**

21 A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. §  
22 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant  
23 to 28 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable  
24 to afford counsel." However, the court will appoint counsel for indigent civil litigants only in  
25 "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983  
26 action). *See also Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1104 (9th Cir. 2004)

1 (allowing court appointment of an attorney to represent a plaintiff in a civil action when  
2 exceptional circumstances exist). “When determining whether ‘exceptional circumstances’  
3 exist, a court must consider the likelihood of success on the merits as well as the ability of the  
4 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues  
5 involved.... Neither of these considerations is dispositive and instead must be viewed  
6 together.” *Palmer*, 560 F.3d at 970.

7 First, the Court notes that two of Plaintiff’s claims have survived screening. Next, it  
8 does not appear Plaintiff will be able to articulate his claims *pro se* in light of the complexity  
9 of the legal issues involved for two reasons: (1) medical indifference claims are by nature  
10 complex and, (2) Plaintiff asserts he suffers from schizophrenia, largely impeding his ability  
11 to concentrate.

12 Finally, in district courts, the appointment of counsel for persons financially unable to  
13 obtain representation in criminal cases is governed by 18 U.S.C. § 3006A. “A person for  
14 whom counsel is appointed shall be represented at every stage of the proceedings from his  
15 initial appearance before the United States magistrate judge or the court through appeal,  
16 including ancillary matters appropriate to the proceedings.” 18 U.S.C. § 3006A(c). Ancillary  
17 matters include proceedings sufficiently related to the underlying criminal case. *See United*  
18 *States v. Martinson*, 809 F.2d 1364, 1370 (9th Cir. 1987). In evaluating the circumstances of  
19 this case, the Court notes that Plaintiff is represented by the Federal Public Defender’s Office  
20 (“FPD”) in a separate suit for habeas corpus relief, Case No. 2:20-cv-0847-RFB-BNW.  
21 Plaintiff’s habeas counsel’s case is ancillary to this proceeding and the Court therefore finds it  
22 appropriate, under the specific circumstances of this case, to appoint counsel to represent  
23 Plaintiff.

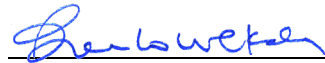
### 24 III. CONCLUSION

25 For these reasons, Plaintiff’s motion for appointment of counsel (ECF No. 16) is  
26 **GRANTED**. The Court **APPOINTS** the Federal Public Defender to represent Plaintiff in this  
matter. The Court **INSTRUCTS** the Clerk’s Office to add the Federal Public Defender’s

1 Office to the service list in this matter, and further, to separately serve this order on the  
2 Federal Public Defender's Office so representation may begin immediately.

3 **IT IS SO ORDERED.**

4 DATED: November 30, 2023.

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6 BREND A WEKSLER  
7 UNITED STATES MAGISTRATE JUDGE  
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